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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GREGORY ALLOSSERY,

Plaintiff,

v.

MEDTRONIC, INC., AND DOES 1-
100, Inclusive,

Defendants.

Case No.: CV 11-01627-GHK (Ex)

~~[PROPOSED]~~

**STIPULATION AND
PROTECTIVE ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to this action, Plaintiff Gregory Allossery ("Plaintiff") and Defendant Medtronic, Inc. ("Defendant"), and their undersigned counsel, as follows:

A. "CONFIDENTIAL" MATERIALS

1. All materials and copies, transcriptions, or other reproductions of materials (hereinafter "The Materials") produced in this action pursuant to the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for the Central District of California or otherwise, and which contain, describe, identify or refer to information of a confidential or proprietary nature or information subject to any applicable data privacy statutes and regulations (e.g., the Health Insurance Portability and Accountability Act ("HIPAA") and similar statutes and regulations), shall be stamped "CONFIDENTIAL" by the producing party and shall be subject to the provisions of this Stipulation and Protective Order.

2. Counsel for a party to this action may challenge the "CONFIDENTIAL" designation made by the producing party of any of The Materials by first requesting a "meet and confer" with the producing party in an attempt to amicably resolve the

1 challenge. In the event agreement cannot be reached, the challenging party may make
2 written application to this Court, which application shall describe with specificity the
3 particular materials for which the designation is being challenged and set forth with
4 specificity any and all grounds for the challenge, it being agreed that the party seeking to
5 maintain The Materials as "CONFIDENTIAL" generally will bear the burden of proof as
6 to such designation. The Materials designated "CONFIDENTIAL" shall continue to be
7 treated as such and subject to the provisions of this Stipulation and Protective Order
8 pending determination by the Court of the merits of any such a challenge.

9 3. The Materials designated "CONFIDENTIAL" shall be used for purposes of
10 this action only and for no other action or purpose whatsoever and shall not, without
11 leave of this Court, be disclosed to any person or entity other than this Court (under seal)
12 and the parties to this action and their counsel, each of whom shall have executed a copy
13 of this Stipulation and Protective Order prior to their receipt of The Materials.

14 4. The disclosure by counsel or co-counsel for a party to this action of The
15 Materials to experts or other consultants retained by the disclosing counsel shall not
16 constitute a violation of, or a waiver of the protections afforded by, this Stipulation and
17 Protective Order so long as the person to whom disclosure is made has executed an
18 Affidavit in the form attached hereto as Exhibit A. A copy of each executed Affidavit in
19 the form attached hereto as Exhibit A shall be maintained by counsel for Plaintiff or
20 Defendant, respectively. Paralegals and clerical staff employed by the disclosing
21 counsel's office shall not be required to execute an Affidavit.

22 5. In the event The Materials themselves, or the contents of The Materials
23 designated "CONFIDENTIAL" are to be identified, discussed, or disclosed during a
24 deposition taken in this action of any person or entity other than those persons or entities
25 described in paragraphs 3 and 4 above, the deponent shall be required to acknowledge on
26 the record, before any identification, discussion or disclosure of The Materials occurs that
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1 he or she has been advised of and has agreed to be bound by the terms of this Stipulation
2 and Protective Order.

3 6. All portions of any deposition transcript taken in this action wherein The
4 Materials themselves, or the contents of The Materials designated "CONFIDENTIAL"
5 are identified, discussed, or disclosed, shall also be designated as "CONFIDENTIAL"
6 and shall be subject to the terms of this Stipulation and Protective Order.

7 7. In the event that counsel for a party wishes to identify, discuss, or disclose
8 The Materials or the contents of The Materials designated "CONFIDENTIAL" during
9 the course of pre-trial or trial proceedings, he or she shall, prior to each identification,
10 discussion, or disclosure make reference to the confidential nature thereof to the Court
11 and to counsel for the party which produced The Materials; and counsel for the producing
12 party may at that time, or after such identification, discussion, or disclosure, request that
13 The Materials or the contents of the Materials designated "CONFIDENTIAL" be filed
14 under seal with this Court and be subject to the terms of this Stipulation and Protective
15 Order.

16 8. In the event The Materials designated as "CONFIDENTIAL" or transcripts
17 or other things wherein The Materials or the contents of The Materials designated
18 "CONFIDENTIAL" are identified, discussed, or disclosed, are filed or are otherwise
19 deposited with the Clerk of this Court, such materials shall be filed or deposited in a
20 sealed envelope bearing the following designation:

21
22 **"CONFIDENTIAL: THE CONTENTS OF THIS ENVELOPE ARE**
23 **SUBJECT TO A PROTECTIVE ORDER OF THIS COURT AND**
24 **SHALL NOT BE SHOWN TO ANY PERSONS OTHER THAN A**
25 **JUDGE OF THIS COURT OR AN ATTORNEY IN THIS CASE."**

26 9. Counsel for a party shall not, in the presence of the jury, comment on the
27 reasons or motivation for designating The Materials as "CONFIDENTIAL" without first
28 having obtained permission of the Court to do so.

1 10. Nothing in this Stipulation and Protective Order shall be construed to
2 preclude the producing party from seeking additional protection for The Materials or the
3 contents of The Materials designated as "CONFIDENTIAL" or from otherwise seeking a
4 modification of this Stipulation and Protective Order.

5 11. Within thirty (30) days of the conclusion of this matter, including any
6 appeals taken, counsel for Plaintiff agrees to provide Medtronic with an Affidavit in the
7 form attached hereto as Exhibit B.

8 **B. PRIVILEGED MATERIALS**

9 12. This provision is being entered into to govern the inadvertent disclosure of
10 privileged or protected documents or materials (hereinafter the "Privileged Materials").

11 13. The inadvertent production or disclosure of any Privileged Materials
12 protected by the attorney-client privilege, the attorney work-product doctrine, a joint
13 defense privilege or any other applicable privilege, immunity or protective doctrine
14 (collectively a "Privilege") shall not constitute, or be considered as a factor suggesting, a
15 waiver or impairment of any claims of such Privilege. In the event of inadvertent
16 production or disclosure, the producing party may provide written notice that Privileged
17 Materials have been inadvertently produced or disclosed. Within seven (7) days of
18 receipt of such notice, any person that has received such Privileged Materials shall return
19 to the producing party all such Privileged Materials and any copies thereof in its
20 possession and shall make reasonable efforts to reclaim and return all such Privileged
21 Materials.

22 14. Any party receiving materials that, on their face, appear to be covered by a
23 Privilege, shall provide prompt notice of the disclosure to the producing party to afford
24 the producing party the opportunity to designate the materials as inadvertently produced
25 Privileged Materials subject to the claw-back provision in Paragraph 13.

26 15. Nothing herein shall prevent any party from seeking further or greater
27 protection from the Court with respect to the treatment of Privileged Materials in
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1 connection with this action, and nothing herein shall be construed to affect the
2 evidentiary admissibility of any documents, testimony, information or other materials.

3 ***

4 16. This Stipulation and Protective Order shall be binding throughout and after
5 final adjudication of this action, including but not limited to, final adjudication of any
6 appeals and petitions for extraordinary writs.

7 17. Notwithstanding the date upon which the Court entered this Stipulation and
8 Protective Order, this Stipulation and Protective Order shall become effective and
9 binding upon each of the parties to this action, and each of their undersigned counsel, on
10 the date each party and each counsel execute same.

11 18. Nothing in this Stipulation and Protective Order shall be construed to
12 prevent this Court from disclosing any facts relied upon by it in making or rendering any
13 finding, ruling, order, judgment or decree of whatever description.

14 19. This Stipulation and Protective Order may be executed in one or more
15 counterparts in which case all executed counterparts and each of them shall be deemed to
16 be one and the same instrument.

17 20. Each of the parties to this action and each of their undersigned counsel
18 acknowledge that they have executed this Stipulation and Protective Order voluntarily
19 and that the terms and provisions of this Stipulation and Protective Order have been read
20 and understood by them.

21 Dated: 12/7/2011

MARTIN O'NEILL LAWYERS, APC

22 By: 
23
24

Peter A. Martin, Esq.

25 *Attorneys for Plaintiff*
26 *Gregory Allossery*
27
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1 Dated: 12/7/2011

GREENBERG TRAURIG, LLP

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3 By: 

4 Robert J. Herrington, Esq.

5 *Attorneys for Defendant*
6 *Medtronic, Inc.*
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EXHIBIT A

AFFIDAVIT OF _____

STATE OF _____)

) ss:

COUNTY OF _____)

Before me, the undersigned Notary Public, in and for said County and State, personally appeared _____, who after first being duly sworn, states as follows:

1. My name is _____. I am over the age of 18 years and am a resident of _____ County, _____. I make this Affidavit based upon my personal knowledge, and I am competent to testify to the matters stated herein.

2. I am aware that a Stipulation and Protective Order has been entered in the matter, *Gregory Allossery v. Medtronic, Inc. et al.*, Case No. CV 11-01627-GHK (Ex).

3. A copy of the Stipulation and Protective Order has been shown to me, and I have read and understand its contents.

4. By signing this Affidavit, I promise that I will use the materials and contents of the materials designated "CONFIDENTIAL" pursuant to the above-described Stipulation and Protective Order for the purpose of assisting counsel for a party to the above-described civil action in the adjudication of that action and for no other purpose.

5. By signing this Affidavit, I also promise that I will not communicate, disclose, discuss, identify, or otherwise use materials or the contents of materials

1 designated "CONFIDENTIAL" pursuant to the above-described Stipulation and
2 Protective Order with, to, or for any person or entity other than the Court, a party to the
3 above-described civil action, counsel for a party to the above-described civil action,
4 including other counsel, paralegals, and clerical staff employed in his or her office,
5 persons permitted by the above-described Stipulation and Protective Order to attend
6 depositions taken in the above-described civil action, and persons or entities assisting
7 such counsel who have executed an affidavit in the same form as this Affidavit.
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10 6. By signing this Affidavit, I also promise that I will not copy, transcribe, or
11 otherwise reproduce, or cause to be copied, transcribed, or otherwise reproduced, by any
12 means whatsoever, any materials or the contents of any materials designated
13 "CONFIDENTIAL" pursuant to the above-described Stipulation and Protective Order
14 except to the extent to which I am directed to do so by counsel for a party to the above-
15 described civil action, in which case all such copies, transcriptions, or reproductions shall
16 be made solely for my own use in connection with my work in the above matter. I
17 further promise at the conclusion of this case to deliver upon request all materials
18 (originals and copies) designated "CONFIDENTIAL" to the counsel who originally
19 directed that said materials be provided to me.
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22 7. I understand that, by signing this agreement, I am agreeing to subject myself
23 to the jurisdiction of this Court.
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26 8. I understand that any use or distribution of the materials or contents of the
27 materials designated "CONFIDENTIAL" pursuant to the above-described Stipulation
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1 and Protective Order in any manner contrary to the provisions thereof will subject me,
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3 among other things, to the summary sanctions of this Court for contempt.

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5 FURTHER AFFIANT SAYETH NOT.
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8 _____
Signature of Affiant

9
10 Subscribed and sworn to before me,
11 this ____ day of _____, 2011.

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Notary Public
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EXHIBIT B

AFFIDAVIT OF _____

STATE OF _____)

) ss:

COUNTY OF _____)

Before me, the undersigned Notary Public, in and for said County and State,
personally appeared _____, Esq., who after first being duly
sworn, states as follows:

1. My name is _____. I am over the age of 18 years and am a
resident of _____ County, _____. I make this Affidavit based
upon my personal knowledge, and I am competent to testify to the matters stated herein.

2. I have requested and received from _____ all of the
materials, transcripts, and other things described in the Protective Order which was
entered by the Court in *Gregory Allossery v. Medtronic, Inc. et al.*, Case No. CV 11-
01627-GHK (Ex).

3. I have either destroyed or have attached hereto all of the materials,
transcripts, and other things, including those materials which were returned to me by
_____ in accordance with the preceding paragraph, described in the
Stipulation and Protective Order which was entered by the Court in *Gregory Allossery v.*
Medtronic, Inc. et al., Case No. CV 11-01627-GHK (Ex).

1 FURTHER AFFIANT SAYETH NOT.
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4
5 _____
Signature of Affiant

6 Subscribed and sworn to before me,
7 this ____ day of _____, 2011.
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9 _____
Notary Public
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ORDER

It is so ORDERED.

Dated: 12/12/11, 2011



HON. ~~GEORGE H. KING~~ CHARLES F. ERICKSON

United States ~~District Judge~~

Magistrate Judge